

Remarks

This Application has been carefully reviewed in light of the Office Action ("Office Action") mailed electronically on January 6, 2010. Applicant appreciates the Examiner's consideration of the Application. Claims 1-24 remain pending. Applicant respectfully requests reconsideration and allowance of all pending claims.

Examiner's Note

The Examiner states that 35 U.S.C. § 112, 6th paragraph has not been invoked when considering Claims 7-12. Specifically, the Examiner states that while the first prong of the three-prong test used to determine invocation is satisfied, "since no other specific structural limitations are disclosed in the specification, the claims do not meet the other tests of the three-prong test." *Office Action*, pg. 2. Applicant respectfully disagrees.

First, it appears to Applicant that the Examiner is misstating the three-prong test regarding invocation of § 112, 6th paragraph. The M.P.E.P. recites the following:

A claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis: (A) the claim limitations must use the phrase "means for" or "step for," (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function.

M.P.E.P. ch. 2181(I). Contrary to the Examiner's statement, there is no recitation in this test regarding "specific structural limitations . . . disclosed in the specification."

Furthermore, based on the correctly-stated test, Applicant respectfully submits that Claims 7-12 clearly satisfy all three prongs. As the Examiner states, these claims recite "means for" language, clearly satisfying prong (A). Additionally, the claims recite functional language that modifies the "means for" language (e.g., means for determining, means for providing access, etc.). Therefore, prong (B) is satisfied. Finally, Applicant respectfully submits that the "means for" language of these claims is not modified by sufficient structure, material, or acts for achieving the specified function. Accordingly, Applicant requests reconsideration and acknowledgement that Claims 7-12 properly invoke § 112, 6th paragraph.

Section 101 Rejections

The Examiner rejects Claims 1-12 and 19-24 under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Applicant respectfully traverses these rejections.

Applicant has amended Claim 1 to recite a “computer-implemented” method wherein the computer comprises “a memory and a central processing unit.” Similarly, Applicant has amended Claim 19 to recite a computer comprising a memory and a central processing unit, the computer being operable to perform the recited steps. Therefore, Applicant respectfully contends that the rejections of Claims 1 and 19, along with the rejections of their respective dependent Claims, are moot. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 1-6 and 19-24

With respect to Claims 7-12, the Examiner states that the “‘means’ appear to be merely software.” *Office Action*, pg. 4. Applicant respectfully disagrees, pointing to the Federal Circuit’s opinion in *WMS Gaming, Inc. v. Int’l Game Tech.*, 184 F.3d 1339 (Fed. Cir. 1999). There, the Court stated that the structure corresponding to a computer-implemented means-plus-function claim “is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.” *Id.* at 1349; *see also Aristocrat Tech. Australia Pty Ltd. v. International Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008). Therefore, the interpretation of Claims 7-12 as non-statutory and “merely software” is legally incorrect as illustrated by the cases cited above. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 7-12.

Rejections under 35 U.S.C. § 103

The Examiner rejects Claims 1-4, 7-10, 13-16, and 19-22 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of U.S. Publication No. 20050037733 issued to Coleman et al. (“*Coleman*”). Applicant respectfully traverses these rejections for at least the reasons discussed below.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *See* M.P.E.P. § 2143.

Claim 1 recites, in part:

determining an initial system certainty value for the computer system;
providing access to a database of signatures, each signature including a
signature certainty value;
receiving data;
comparing the received data with the database of signatures;
increasing the system certainty value if the received data does not
match a signature in the database;
decreasing the system certainty value if the received data matches a
signature in the database; and
filtering the data based on the system certainty value and the signature
certainty value of a signature matching the received data.

Applicant respectfully contends that the proposed *Vaidya-Coleman* combination fails to disclose, teach, or suggest every limitation of Claim 1. The Office Action states that *Vaidya* fails to explicitly disclose the limitations “determining an initial system certainty value for the computer system,” “increasing the system certainty value if the received data does not match a signature in the database,” and “decreasing the system certainty value if the received data matches a signature in the database.” *Office Action*, pgs. 5-6. Instead, the Office Action relies on *Coleman* as disclosing or suggesting these limitations. *Office Action*, pgs. 5-8.

Coleman discloses a method and system that “provides autonomous wireless intrusion detection and prevention, with minimal or no operator intervention.” *Coleman*, Abstract. In rejecting these claims, the Office Action relies on the “mistrust level for each wireless network device” as reciting an initial system certainty value for the computer system. *Office Action*, pg. 5. Applicant respectfully disagrees. These mistrust levels correspond to individual levels associated with each wireless network device located within a computer system. There is no disclosure, teaching, or suggestion of a single initial system certainty value for the computer system.

Furthermore, even if the Office Action’s proposed mapping is correct (a point Applicant does not concede), Applicant respectfully contends that *Coleman* fails to disclose, teach, or suggest “increasing the system certainty value if the received data does not match a signature in the database” and “decreasing the system certainty value if the received data matches a signature in the database.” While *Coleman* does disclose incrementing and decrementing the mistrust levels, Applicant respectfully contends that these changes are not based on either matching or not matching signatures. For instance, *Coleman* clearly states that “mistrust level decrementing is accomplished based on three parameters, described as

follows: (1) a decrement timer D1 exceeds a mistrust level decrement interval from the operational protection suite; (2) mistrust level four has been reached, the wireless network device 36, 38 successfully re-authenticates, and re-login is also successful; (3) manual intervention 90 from the network administrator 92.” *Coleman*, ¶ 0121. Therefore, the decrementing process disclosed in *Coleman* is based only on timing, manual intervention, or re-authentication. There is no disclosure, teaching, or suggestion that matching or not matching a signature plays any role in this step. Accordingly, Applicant respectfully requests reconsideration and allowance of Claim 1.

Claims 2-4 depend from Claim 1 and incorporate all the limitations thereof. As such, Applicant respectfully requests reconsideration and allowance of Claims 2-5 for at least the same reasons as Claim 1.

Similar to Claim 1, Claims 7, 13, and 19 include elements directed to “increasing the system certainty value if the received data does not match a signature in the database” and “decreasing the system certainty value if the received data matches a signature in the database.” Thus, for at least the reasons discussed above with regard to Claim 1, Applicant respectfully requests reconsideration and allowance of Claims 7, 13, and 19. Claims 8-10 depend from Claim 7 and incorporate all the limitations thereof. Claims 14-16 depend from Claim 13 and incorporate all the limitations thereof. Claims 20-22 depend from Claim 19 and incorporate all the limitations thereof. As such, Applicant respectfully requests reconsideration and allowance of Claims 8-10, 14-16, and 20-22 be withdrawn.

The Examiner also rejects Claims 5, 11, 17, and 23 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of *Coleman*, in view of U.S. Publication No. 20040172557 issued to Nakae et al. (“*Nakae*”). The Examiner also rejects Claims 6, 12, 18, and 24 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of *Coleman*, in view of *Nakae*, and in view of U.S. Patent No. 7032114 issued to Moran (“*Moran*”). Applicant respectfully traverses these rejections for at least the reasons discussed below.

In rejecting each of these dependent claims, the Office Action relies on the proposed *Vaidya-Coleman* combination to disclose each and every element of the base independent Claims 1, 7, 13, and 19. As shown above, Applicant respectfully contends that this proposed combination fails to disclose, teach, or suggest every limitation of the independent base claims. The additional cited references fail to cure these deficiencies. As such, Applicant

respectfully contends that Claims 5-6, 11-12, 17-18, and 23-24 are allowable over the cited references. Accordingly, Applicant requests reconsideration and allowance of Claims 5-6, 11-12, 17-18, and 23-24.

No Waiver

All of Applicant's arguments are without prejudice or disclaimer. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The remarks discussed by Applicant are sufficient to overcome the Examiner's rejections.

CONCLUSION

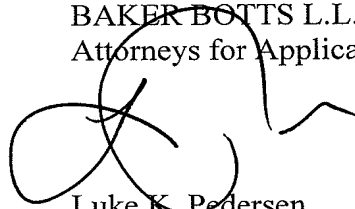
Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

Applicant believes that no fee is due. However, the Commissioner is hereby authorized to charge any fee or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Luke K. Pedersen, Attorney for Applicant, at the Examiner's convenience at (214) 953-6655.

Respectfully submitted,

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